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 JUL 26 2010
 RICHARD W. WIEKING
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

10
 11 PETER MENDOZA,
 12 Plaintiff,

13 v.

14
 15
 16 AMZONE LLC; AUGO
 MARTINEZ; HOYTT
 ENTERPRISES, INC.; and
 17 DOES 1-10, Inclusive,
 18 Defendants.

CASE NO.
Civil Rights

19 COMPLAINT FOR PRELIMINARY AND
 20 PERMANENT INJUNCTIVE RELIEF AND
 21 DAMAGES: DENIAL OF CIVIL RIGHTS
 22 AND ACCESS TO PUBLIC FACILITIES
 23 TO PHYSICALLY DISABLED PERSONS,
 24 PER FEDERAL AND CALIFORNIA
 25 STATUTES (INCLUDING CIVIL CODE
 26 §§ 51, 52, 54, 54.1, 54.3, AND § 55; and
 27 HEALTH & SAFETY CODE §§ 19953 *et
 seq.*); INJUNCTIVE RELIEF PER TITLE
 28 III, AMERICANS WITH DISABILITIES
 ACT OF 1990

DEMAND FOR JURY TRIAL

20
 21 Plaintiff PETER MENDOZA complains of defendants AMZONE
 22 LLC; AUGO MARTINEZ; HOYTT ENTERPRISES, INC.; and DOES 1-10,
 23 Inclusive, and each of them, and alleges as follows:

24 1. **INTRODUCTION:** This case involves the denial of accessible
 25 public facilities, including parking facilities, exterior paths of travel and access to
 26 the entrances, interior paths of travel, public restrooms, and related facilities, to
 27 plaintiff and other disabled persons at the Taco Bell Restaurant, located at 930
 28 Seventh St., Novato, California. Plaintiff Peter Mendoza is a "person with a

1 disability" or "physically handicapped person" due to cerebral palsy, cancer, and
 2 lower limb amputation. Plaintiff requires the use of a motorized wheelchair for
 3 mobility and is unable to use portions of public facilities which are not accessible
 4 to disabled persons, including those who require the use of a wheelchair. Plaintiff
 5 was denied his rights to full and equal access at these facilities, was physically
 6 trapped in the men's restroom for more than half an hour, until finally rescued,
 7 and was denied his civil rights under both California law and federal law, because
 8 these facilities were not, and are not now, properly accessible to physically
 9 disabled persons, including those who use wheelchairs. Plaintiff seeks injunctive
 10 relief to require defendants to make these facilities accessible to disabled persons
 11 and to ensure that any disabled person who attempts to use this Novato Taco Bell
 12 Restaurant (hereinafter sometimes "Taco Bell" or "Restaurant"), will be provided
 13 accessible facilities. Plaintiff also seeks recovery of damages for his physical,
 14 mental and emotional injuries, and his discriminatory experiences and denial of
 15 access and of civil rights, which denial is continuing as a result of defendants'
 16 failure and refusal to provide disabled accessible facilities. Plaintiff also seeks
 17 recovery of reasonable statutory attorney fees, litigation expenses and costs, under
 18 federal and state law.

19 2. **JURISDICTION:** This Court has jurisdiction of this action
 20 pursuant to 28 USC § 1331 for violations of the Americans with Disabilities Act
 21 of 1990, 42 USC §§ 12101 *et seq.* Pursuant to pendant jurisdiction, attendant and
 22 related causes of action arising from the same facts are also brought under
 23 California law, including but not limited to violations of Health & Safety Code
 24 §§ 19953-19959; California Civil Code §§ 51, 52, 54, 54.1, 54.3 and 55; and Title
 25 24 California Code of Regulations.

26 3. **VENUE:** Venue is proper in this court pursuant to 28 USC § 1331(b)
 27 and is founded on the fact that the real property which is the subject of this action
 28 is located in this district and that plaintiff's causes of action arose in this district.

1 4. **INTRADISTRICT:** This case should be assigned to the San
 2 Francisco/Oakland intradistrict as the real property which is the subject of this
 3 action is located in this intradistrict and plaintiff's causes of action arose in this
 4 intradistrict.

5 5. **PARTIES:** Plaintiff Peter Mendoza is a qualified physically disabled
 6 person who is mobility impaired and requires use of a motorized wheelchair for
 7 locomotion. He also possesses a disabled parking placard issued by the State of
 8 California and is frequently transported in a disabled licensed van which requires
 9 parking in a properly configured van-accessible parking space. Defendants
 10 AMZONE LLC; AUGO MARTINEZ; HOYTT ENTERPRISES, INC.; and
 11 DOES 1-10, Inclusive, are the owners, operators, lessors, and lessees of the
 12 business, property, buildings, parking lots, and/or portions thereof located at 930
 13 Seventh St., Novato, California, a Taco Bell restaurant franchised by the Taco
 14 Bell Corporation. This Restaurant, its restrooms and parking facilities are each a
 15 "public accommodation and business establishment" subject to the requirements
 16 of § 301(7) of the Americans with Disabilities Act of 1990, of California Health
 17 & Safety Code §§ 19953 *et seq.*, of California Civil Code §§ 51 *et seq.* and of
 18 §§ 54 *et seq.* On information and belief, this Restaurant and its facilities have,
 19 since July 1, 1970, undergone construction and/or "alterations, structural repairs,
 20 or additions," subjecting each such facility to disabled access requirements per
 21 Health & Safety Code §§ 19955-19959 *et seq.*, and, as to alterations since January
 22 26, 1993, to the disabled access requirements of § 303 of the Americans with
 23 Disabilities Act of 1990 (hereinafter sometimes "ADA"). Further, irrespective of
 24 the alteration history, such premises are subject to the "readily achievable" barrier
 25 removal requirements of Title III of the ADA, as defined by ADA § 301(9).

26 6. The true names and capacities of Defendants Does 1 through 10,
 27 Inclusive, are unknown to plaintiff who therefore sues said defendants by such
 28 fictitious names. Plaintiff is informed and believes that each of the defendants

1 herein designated as a Doe is legally responsible in some manner for the events
 2 and happenings herein referred to and caused injury and damages proximately
 3 thereby to plaintiff; plaintiff prays leave of Court to amend this Complaint to
 4 show such true names and capacities when the same have been ascertained.

5 7. Defendants AMZONE LLC; AUGO MARTINEZ; HOYTT
 6 ENTERPRISES, INC.; and DOES 1-10, Inclusive, are and were the owners,
 7 operators, lessors and lessees of the subject business, property and/or building at
 8 all times relevant to this Complaint. Plaintiff is informed and believes that each
 9 of the defendants herein is the agent, employee or representative of each of the
 10 other defendants, and performed all acts and omissions stated herein within the
 11 scope of such agency or employment or representative capacity, and is
 12 responsible in some manner for the acts and omissions of the other defendants in
 13 proximately causing the damages complained of herein.

14

15 **FIRST CAUSE OF ACTION: DAMAGES AND INJUNCTIVE RELIEF
 16 FOR DENIAL OF FULL AND EQUAL ACCESS TO PUBLIC FACILITIES
 17 IN A PUBLIC ACCOMMODATION**
 18 (California Health & Safety Code §§ 19955 *et seq.*, Civil Code §§ 54 *et seq.*)

19 8. Plaintiff repleads and incorporates by reference, as if fully set forth
 20 again herein, the factual allegations contained in Paragraphs 1 through 7, above,
 21 and incorporates them herein by reference as if separately replied hereafter.

22 9. Plaintiff Peter Mendoza and other similarly situated physically
 23 disabled persons, including those who require the use of a wheelchair, are unable
 24 to use public facilities on a “full and equal” basis unless each such facility is in
 25 compliance with the provisions of California Health & Safety Code §§ 19955 *et seq.*
 26 Plaintiff is a member of that portion of the public whose rights are protected
 27 by the provisions of Health & Safety Code §§ 19955 *et seq.*

28 10. Health & Safety Code §§ 19955 and 19955.5 were enacted “[t]o
 29 ensure that public accommodations or facilities constructed in this state with

1 private funds adhere to the provisions of Chapter 7 (commencing with Section
 2 4450) of Division 5 of Title 1 of the Government Code.” On information and
 3 belief the provisions of both Health and Safety Code §§ 19955 and 19955.5,
 4 apply to the subject Restaurant. The code relating to such public
 5 accommodations also requires that “When sanitary facilities are made available
 6 for the public, clients, or employees... they shall be made available for persons
 7 with disabilities.” Title 24, California Code of Regulations, formerly known as
 8 the California Administrative Code, was in effect at the time of each alteration
 9 which, on information and belief, occurred at such public facility since July 1,
 10 1982, thus requiring access complying with the specifications of Title 24
 11 whenever each such “alteration, structural repair or addition” was carried out. On
 12 information and belief, defendants and/or their predecessors in interest carried out
 13 alterations, structural repairs, or additions to such buildings and facilities during
 14 the period Title 24 has been in effect. Further, plaintiff alleges that alterations,
 15 structural repairs, and/or additions which triggered access requirements at all
 16 relevant portions of the Restaurant, also occurred between July 1, 1970 and July
 17 1, 1982, and required access pursuant to the A.S.A. (American Standards
 18 Association) Regulations then in effect, pursuant to the incorporated provisions of
 19 California Government Code §§ 4450 *et seq.*

20 **11. FACTUAL STATEMENT:** At all times mentioned herein,
 21 plaintiff Peter Mendoza has been a qualified disabled person due to multiple
 22 disabilities, including cerebral palsy, cancer, and a lower limb amputation. His
 23 disabilities require him to use a motorized wheelchair for mobility. On or about
 24 January 29, 2010, while on his way to a funeral, plaintiff Peter Mendoza visited
 25 the Taco Bell restaurant located at 930 Seventh St., Novato, California, to have
 26 lunch. After purchasing lunch, plaintiff entered the men’s restroom to use its
 27 facilities. In order to enter the restroom, plaintiff had to request assistance from
 28 one of defendants’ employees to open the men’s restroom door, as the door was

1 too heavy for plaintiff to open. Once inside the restroom plaintiff had difficulties
 2 using the toilet stall because it was improperly configured and did not provide
 3 sufficient turn-around space. Plaintiff also had difficulty using the sink because a
 4 garbage can blocked disabled use of the sink.

5 12. When plaintiff attempted to exit the restroom he was unable to open
 6 the door, because the door was more than three times as heavy as the maximum
 7 legally allowed. It also had inaccessible round doorknob instead of lever
 8 hardware required for disabled access, and lacked proper strike edge clearance to
 9 allow disabled persons to independently exit. Trapped in the restroom, plaintiff
 10 used his cell phone to call the phone number for this Novato Taco Bell restaurant,
 11 but no one answered. In desperation, plaintiff called to another Taco Bell, and the
 12 manager there called the Novato Police. After plaintiff had been trapped in the
 13 restroom for about one-half hour, he was finally released when another customer
 14 entered the restroom. On information and belief, after the Novato Police were
 15 contacted for help, the police also called the Restaurant and also received no
 16 answer to their call. Eventually the police were able to talk to the manager of the
 17 subject Restaurant, who related that plaintiff had finally been released from the
 18 restroom and required no further assistance. Plaintiff was frightened and
 19 humiliated by the experience, and suffered physical, mental and emotional
 20 inquiries, all to his general, statutory and treble damages.

21 13. On information and belief, this Taco Bell restaurant was also
 22 inaccessible to disabled persons in multiple additional ways, including but not
 23 limited to improperly high counters, and improperly designated, numbered and
 24 configured disabled accessible and van-accessible parking. (Although plaintiff
 25 does not personally drive, he possesses a disabled parking placard for use when
 26 he is driven by other people, usually in a van.) On information and belief, at the
 27 time of each of the above-described incidents, and continuing to the present, the
 28 access barriers at this Taco Bell restaurant also included but were not limited to

1 the following: a pedestrian walkway across an automobile drive through lane,
 2 which created a hazardous crossing situation for wheelchair users; excessively
 3 heavy entry doors to the Restaurant; the landing for the exterior doors was
 4 excessively sloped; the men's restroom toilet stall door was not self-closing, had
 5 no latch, and did not have loop hardware for disabled use; and the toilet paper
 6 dispenser was improperly located.

7 14. The above-described barriers to access are listed without prejudice to
 8 plaintiff citing additional barriers to access after inspection by plaintiff's access
 9 consultant, per the 9th Circuit's standing standards under Doran v. 7-Eleven, Inc.
 10 524 F.3d 1034 (9th Cir. 2008). All of these barriers to access render the premises
 11 inaccessible to and unuseable by physically disabled persons. All facilities must
 12 be brought into compliance with all applicable federal and state code
 13 requirements, according to proof.

14 15. Further, each and every violation of the Americans With Disabilities
 15 Act of 1990 (as pled in the Third Cause of Action, *infra*, the contents of which are
 16 replied and incorporated herein, word for word, as if separately replied), also
 17 constitutes a separate and distinct violation of California Civil Code § 54(c), thus
 18 independently justifying an award of damages and injunctive relief pursuant to
 19 California law, including but not limited to Civil Code §§ 54.3 and 55.

20 16. Further, each and every violation of the Americans With Disabilities
 21 Act of 1990 (as pled in the Third Cause of Action, *infra*, the contents of which are
 22 replied and incorporated herein, word for word, as if separately replied), also
 23 constitutes a separate and distinct violation of California Civil Code § 54.1(d),
 24 thus independently justifying an award of damages and injunctive relief pursuant
 25 to California law, including but not limited to Civil Code §§ 54.3 and 55.

26 17. **INJUNCTIVE RELIEF:** Plaintiff seeks injunctive relief to prohibit
 27 the acts and omissions of defendants as complained of herein which are
 28 continuing on a day-to-day basis and which have the effect of wrongfully

1 excluding plaintiff and other members of the public who are physically disabled,
 2 including but not limited to wheelchair users, from full and equal access to these
 3 public facilities. Such acts and omissions are the cause of humiliation and mental
 4 and emotional suffering of plaintiff in that these actions continue to treat plaintiff
 5 as an inferior and second class citizen and serve to discriminate against him on
 6 the basis that he is a person with disabilities who requires the use of a wheelchair
 7 for movement in public places. Plaintiff is unable, so long as such acts and
 8 omissions of defendants continue, to achieve equal access to and use of these
 9 public facilities, and cannot return to use this Restaurant and its facilities until
 10 they are made properly accessible to disabled persons. Plaintiff alleges that he
 11 intends to do so, once legally required access has been provided. The acts of
 12 defendants have proximately caused and will continue to cause irreparable injury
 13 to plaintiff if not enjoined by this Court. Plaintiff seeks injunctive relief as to all
 14 areas of the premises that he personally encountered. Further, as to all areas
 15 identified before or during this litigation by plaintiff's access consultant, that
 16 plaintiff or other physically disabled persons may encounter in the future (under
 17 the 9th Circuit's holding in Doran v. 7-Eleven, Inc. 524 F.3d 1034 (9th Cir. 2008)),
 18 plaintiff prays leave to amend this complaint to obtain injunctive relief. As to
 19 those of the defendants that currently own, operate, and/or lease (from or to) the
 20 subject Restaurant, plaintiff seeks preliminary and permanent injunctive relief to
 21 enjoin and eliminate the discriminatory practices and barriers that deny equal
 22 access for disabled persons, and for reasonable statutory attorney fees, litigation
 23 expenses and costs.

24 18. Wherefore plaintiff asks this Court to preliminarily and permanently
 25 enjoin any continuing refusal by defendants to grant full and equal access to
 26 plaintiff in the respects complained of and to require defendants to comply
 27 forthwith with the applicable statutory requirements relating to access for disabled
 28 persons. Such injunctive relief is provided by California Health & Safety Code

1 § 19953 and California Civil Code § 55, and other law. Plaintiff further requests
 2 that the Court award damages pursuant to Civil Code § 54.3 and other law and
 3 attorney fees, litigation expenses, and costs pursuant to Health & Safety Code
 4 § 19953, Civil Code §§ 54.3 and 55, Code of Civil Procedure § 1021.5 and other
 5 law, all as hereinafter prayed for.

6 19. **DAMAGES:** As a result of the denial of full and equal access to the
 7 facility and due to the acts and omissions of defendants and each of them in
 8 owning, operating, leasing, constructing, altering, and maintaining the subject
 9 facility, plaintiff suffered a violation of his civil rights, including but not limited
 10 to rights under Civil Code §§ 54 and 54.1, and suffered physical, mental and
 11 emotional personal injuries, all to his damages per Civil Code § 54.3, including
 12 general and statutory damages, and treble damages, as hereinafter stated.
 13 Defendants' actions and omissions to act constitute discrimination against
 14 plaintiff on the sole basis that he was and is physically disabled and unable,
 15 because of the architectural and other barriers created and/or maintained by the
 16 defendants in violation of the subject laws, to use the public facilities on a full
 17 and equal basis as other persons.

18 20. **TREBLE DAMAGES** - Plaintiff has been damaged by defendants'
 19 wrongful conduct and seeks the relief that is afforded by Civil Code §§ 54, 54.1,
 20 and 54.3. At all times herein mentioned, defendants were fully aware that
 21 significant numbers of potential users of their public facilities are and will be
 22 physically disabled persons. Further defendants knew and know that a significant
 23 portion of the Restaurant's patrons would be and were physically disabled
 24 persons, including wheelchair users and other mobility-impaired persons, and
 25 would have need of facilities that complied with California Title 24 and ADAAG
 26 standards for accessible facilities. Despite this knowledge, defendants installed
 27 and maintained the physical barriers complained of, and failed to remove these
 28 barriers, and have failed to provide properly accessible facilities, according to

1 proof. Further, the managerial employees responsible for policy decisions at this
 2 Restaurant failed to properly supervise employees or maintain telephone intake so
 3 that they could respond to any emergencies, including but not limited to calls for
 4 help from disabled persons, or calls from the police. In addition, one or more of
 5 defendants employees observed plaintiff entering the restroom, and one employee
 6 opened the heavy restroom door for plaintiff, but apparently no one paid attention
 7 to plaintiff failing to exit the restroom or considered that plaintiff was still trapped
 8 inside. Defendants have continued their illegal and discriminatory policies and
 9 practices despite actual knowledge that people with physical mobility disabilities
 10 attempt to patronize the subject Restaurant and encounter illegal barriers when
 11 they do so.

12 21. At all times herein mentioned, defendants knew, or in the exercise of
 13 reasonable diligence should have known, that their barriers and practices at their
 14 subject facilities violated disabled access requirements and standards, and had a
 15 discriminatory affect upon plaintiff and upon other physically disabled persons,
 16 but defendants have refused to rectify the violations, and presently continue a
 17 course of conduct of maintaining architectural barriers that discriminate against
 18 plaintiff and similarly situated disabled persons.

19 22. **FEES AND COSTS:** As a result of defendants' acts, omissions, and
 20 conduct, plaintiff has been required to incur attorney fees, litigation expenses, and
 21 costs as provided by statute, in order to enforce plaintiff's rights and to enforce
 22 provisions of the law protecting access for disabled persons and prohibiting
 23 discrimination against disabled persons. Plaintiff therefore seeks recovery of all
 24 reasonable attorney fees, litigation expenses, and costs, pursuant to the provisions
 25 of Civil Code §§ 54.3 and 55, and California Health & Safety Code § 19953.
 26 Additionally, plaintiff's lawsuit is intended to require that defendants make their
 27 facilities accessible to all disabled members of the public, justifying "public
 28 interest" attorney fees, litigation expenses and costs pursuant to the provisions of

1 California Code of Civil Procedure § 1021.5 and other applicable law.

2 WHEREFORE, plaintiff prays for damages and injunctive relief as
3 hereinafter stated.

4

5 **SECOND CAUSE OF ACTION:**
6 **VIOLATION OF CALIFORNIA LAW INCLUDING: THE UNRUH ACT,**
7 **CIVIL CODE SECTIONS 51 AND 52, AND THE AMERICANS WITH**
8 **DISABILITIES ACT AS INCORPORATED**
9 **BY CIVIL CODE SECTION 51(f)**

10 23. Plaintiff repleads and incorporates by reference, as if fully set forth
11 hereafter, the factual allegations contained in Paragraphs 1 through 22 of this
12 Complaint and incorporates them herein.

13 24. At all times relevant to this complaint, California Civil Code § 51
14 has provided that physically disabled persons are free and equal citizens of the
15 state, regardless of medical condition or disability:

16 All persons within the jurisdiction of this state are free and equal,
17 and no matter what their sex, race, color, religion, ancestry, national
18 origin, disability, or medical condition are entitled to the full and
19 equal accommodations, advantages, facilities, privileges, or services
20 in all business establishments of every kind whatsoever.
21 Cal. Civ. C. § 51(b).

22 25. California Civil Code § 52 provides that the discrimination by
23 defendants against plaintiff on the basis of his disability constitutes a violation of
24 the anti-discrimination provisions of §§ 51 and 52.

25 26. Defendants' discrimination constitutes a separate and distinct
26 violation of California Civil Code § 52, which provides that:

27 Whoever denies, aids or incites a denial, or makes any discrimination
28 or distinction contrary to section 51, 51.5, or 51.6 is liable for each
29 and every offense for the actual damages, and any amount that may
30 be determined by a jury, or a court sitting without a jury, up to a
31 maximum of three times the amount of actual damage but in no case
32 less than four thousand dollars (\$4,000), and any attorney's fees that
33 may be determined by the court in addition thereto, suffered by any
34 person denied the rights provided in Section 51, 51.5, or 51.6.

35 27. Any violation of the Americans With Disabilities Act of 1990

1 (as pled in the Third Cause of Action) constitutes a violation of California Civil
 2 Code § 51(f) thus independently justifying an award of damages and injunctive
 3 relief pursuant to California law. Per § 51(f), “A violation of the right of any
 4 individual under the Americans With Disabilities Act of 1990 (Public Law 101-
 5 336) shall also constitute a violation of this section.”

6 28. The actions and omissions of defendants as herein alleged
 7 constitute a denial of access to and use of the described public facilities by
 8 physically disabled persons within the meaning of California Civil Code §§ 51
 9 and 52. As a proximate result of defendants’ action and omissions, defendants
 10 have discriminated against plaintiff in violation of Civil Code §§ 51 and 52.

11 29. **FEES AND COSTS:** As a result of defendants’ acts,
 12 omissions and conduct, plaintiff has been required to incur attorney fees,
 13 litigation expenses and costs as provided by statute in order to enforce plaintiff’s
 14 rights and to enforce provisions of the law protecting access for disabled persons
 15 and prohibiting discrimination against disabled persons. Plaintiff therefore seeks
 16 recovery of all reasonable attorney fees, litigation expenses and costs pursuant to
 17 the provisions of California Civil Code §§ 51 and 52. Additionally, plaintiff’s
 18 lawsuit is intended to require that defendants make their facilities and policies
 19 accessible to all disabled members of the public, justifying “public interest”
 20 attorney fees, litigation expenses and costs pursuant to the provisions of
 21 California Code of Civil Procedure § 1021.5 and other applicable law.

22 Wherefore, plaintiff prays the Court grant relief as requested hereinbelow.

23

24 **THIRD CAUSE OF ACTION:**
 25 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**
 26 **42 USC §§ 12101 *et seq.***

27 30. Plaintiff repleads and incorporates by reference, as if fully set forth
 28 again herein, the allegations contained in Paragraphs 1 through 29 of this
 Complaint, and incorporates them herein as if separately replied.

1 31. In 1990 the United States Congress made findings that laws were
 2 needed to more fully protect “some 43,000,000 Americans [with] one or more
 3 physical or mental disabilities;” that “historically, society has tended to isolate
 4 and segregate individuals with disabilities;” that “such forms of discrimination
 5 against individuals with disabilities continue to be a serious and pervasive social
 6 problem;” that “the Nation’s proper goals regarding individuals with disabilities
 7 are to assure equality of opportunity, full participation, independent living, and
 8 economic self-sufficiency for such individuals;” and that “the continuing
 9 existence of unfair and unnecessary discrimination and prejudice denies people
 10 with disabilities the opportunity to compete on an equal basis and to pursue those
 11 opportunities for which our free society is justifiably famous...” [42 USC §12101]

12 32. In passing the Americans with Disabilities Act of 1990 (hereinafter
 13 “ADA”), Congress stated as the purpose of the ADA:

14 It is the purpose of this Act

- 15 (1) to provide a clear and comprehensive national mandate for the
 elimination of discrimination against individuals with disabilities;
- 16 (2) to provide clear, strong, consistent, enforceable standards addressing
 discrimination against individuals with disabilities;
- 17 (3) to ensure that the Federal Government plays a central role in enforcing
 the standards established in this Act on behalf of individuals with
 disabilities; and
- 18 (4) to invoke the sweep of congressional authority, including the power to
 enforce the fourteenth amendment and to regulate commerce, in order to
 address the major areas of discrimination faced day-to-day by people with
 disabilities. (Emphasis added)

22 42 USC § 12101(b).

23 33. As part of the ADA, Congress passed “Title III - Public
 24 Accommodations and Services Operated by Private Entities” (42 USC § 12181 *et*
 25 *seq.*). The subject property and facility is one of the “private entities” which are
 26 considered “public accommodations” for purposes of this title, which includes
 27 any “restaurant, bar, or other sales or rental establishment serving food or drink,”
 28 § 301(7)(B).

1 34. The ADA clearly states that “No individual shall be discriminated
2 against on the basis of disability in the full and equal enjoyment of the goods,
3 services, facilities, privileges, advantages, or accommodations of any place of
4 public accommodation by any person who owns, leases, or leases to, or operates a
5 place of public accommodation.” 42 USC § 12182. The specific prohibitions
6 against discrimination included, but were not limited to the following:

7 § 302(b)(1)(A)(ii): “Participation in Unequal Benefit. - It shall be discriminatory

8 to afford an individual or class of individuals, on the basis of a disability or

9 disabilities of such individual or class, directly, or through contractual, licensing,

10 or other arrangements, with the opportunity to participate in or benefit from a

11 good, service, facility, privilege, advantage, or accommodation that is not equal to

12 that afforded to other individuals.”

13 § 302(b)(2)(A)(ii): “a failure to make reasonable modifications in policies,
14 practices, or procedures when such modifications are necessary to afford such
15 goods, services, facilities, privileges, advantages, or accommodations to
16 individuals with disabilities...;”

17 § 302(b)(2)(A)(iii): “a failure to take such steps as may be necessary to ensure
18 that no individual with a disability is excluded, denied service, segregated, or
19 otherwise treated differently than other individuals because of the absence of
20 auxiliary aids and services...;”

§ 302(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities... where such removal is readily achievable;”

24 § 302(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier
25 under clause (iv) is not readily achievable, a failure to make such goods, services,
26 facilities, privileges, advantages, or accommodations available through alternative
27 methods if such methods are readily achievable.”

28 The acts and omissions of defendants set forth herein were in

1 violation of plaintiff's rights under the ADA and the regulations promulgated
 2 thereunder, 28 CFR Part 36 *et seq.*

3 35. The removal of each of the barriers complained of by plaintiff as
 4 hereinabove alleged, were at all times herein mentioned "readily achievable"
 5 under the standards of §§ 301(9) and 302 of the ADA. As noted hereinabove,
 6 removal of each and every one of the architectural barriers complained of herein
 7 were also required under California law. Further, on information and belief,
 8 construction, alterations, structural repairs or additions since January 26, 1993
 9 have also independently triggered requirements for removal of barriers to access
 10 for disabled persons per § 303 of the ADA.

11 36. On information and belief, as of the date of plaintiff's encounter at
 12 the premises and as of the filing of this Complaint, the premises have denied and
 13 continue to deny full and equal access to plaintiff and to other disabled persons,
 14 including wheelchair users, in other respects, which violate plaintiff's rights to
 15 full and equal access and which discriminate against plaintiff on the basis of his
 16 disability, thus wrongfully denying to plaintiff the full and equal enjoyment of the
 17 goods, services, facilities, privileges, advantages and accommodations, in
 18 violation of §§ 302 and 303 of the ADA. 42 USC §§ 12182 and 12183.

19 37. On information and belief, defendants have continued to violate the
 20 law and deny the rights of plaintiff and other disabled persons to access this
 21 public accommodation since on or before plaintiff's encounters, as previously
 22 noted. Pursuant to the ADA, § 308, 42 USC 12188 *et seq.*, plaintiff is entitled to
 23 the remedies and procedures set forth in § 204(a) of the Civil Rights Act of 1964,
 24 42 USC 2000(a)-3(a), as plaintiff is "a qualified" disabled person who is being
 25 subjected to discrimination on the basis of disability in violation of the ADA and
 26 has reasonable grounds for believing that he is about to be subjected to
 27 discrimination should he return to the subject premises. Pursuant to § 308(a)(2),
 28 "In cases of violations of § 302(b)(2)(A)(iv) and § 303(a)... injunctive relief shall

1 include an order to alter facilities to make such facilities readily accessible to and
 2 usable by individuals with disabilities to the extent required by this title.”

3 WHEREFORE, plaintiff prays for relief as hereinafter stated.

4

5 **PRAYER**

6 Plaintiff prays that this Court:

7 1. Issue a preliminary and permanent injunction directing defendants as
 8 current owners, operators, lessors, and/or lessees of the subject property and
 9 premises to modify the above described property and premises and related
 10 facilities to provide full and equal access to all persons, including persons with
 11 physical disabilities; and issue a preliminary and permanent injunction pursuant
 12 to ADA § 308(a) and state law directing defendants to provide facilities usable by
 13 plaintiff and similarly situated persons with disabilities, and which provide full
 14 and equal access, as required by law; and to train defendants' employees and
 15 agents in how to recognize disabled persons and accommodate their rights and
 16 needs.

17 2. Retain jurisdiction over the defendants until such time as the Court is
 18 satisfied that defendants' unlawful policies, practices, acts and omissions, and
 19 maintenance of physically inaccessible public facilities as complained of herein
 20 no longer occur, and can not recur;

21 3. Award to plaintiff all appropriate damages, including but not limited
 22 to statutory damages, general damages, and treble damages in amounts within the
 23 jurisdiction of the Court, all according to proof;

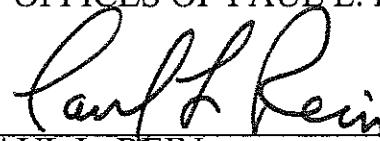
24 4. Award to plaintiff all reasonable statutory attorney fees, litigation
 25 expenses, and costs of this proceeding as provided by law;

26 5. Award prejudgment interest pursuant to Civil Code § 3291; and

27 6. Grant such other and further relief as this Court may deem just and
 28 proper.

1 Dated: July 22, 2010

LAW OFFICES OF PAUL L. REIN



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By PAUL L. REIN
Attorneys for Plaintiff
PETER MENDOZA

DEMAND FOR JURY

8 Plaintiff hereby demands a jury for all claims for which a jury is
9 permitted.

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11 Dated: July 22, 2010

LAW OFFICES OF PAUL L. REIN



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14 By PAUL L. REIN
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